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Talia Saypoff*

I. INTRODUCTION TO PARENTAL LEAVE

Women in developed countries,1 like the United States and Japan, have been fighting an uphill battle in trying to strike that perfect, seemingly unattainable balance between motherhood and professionalism. This pursuit is often bolstered by optimistic ideals, only to be struck down by societal realities. While the struggle varies across countries in terms of progress, details, and desires, most developed countries are moving—allbeit at different rates2—in the same direction.3 Legislation and employer policies are changing to reflect a sentiment that women should be able to be mothers and also pursue their careers.4 Recently, the focus has shifted from women to family in general, as people realize that family responsibilities should be more equally shared so that mothers may have

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1. “There is no established convention for the designation of developed and developing countries or areas in the United Nations system. In common practice, Japan in Asia, Canada and the United States in northern America, Australia and New Zealand in Oceania, and Europe are considered ‘developed’ regions or areas. In international trade statistics, the Southern African Customs Union is also treated as a developed region and Israel as a developed country; countries emerging from the former Yugoslavia are treated as developing countries; and countries of eastern Europe and of the Commonwealth of Independent States . . . in Europe are not included under either developed or developing regions.” Composition of Macro Geographical (Continental) Regions, Geographical Sub-Regions, and Selected Economic and Other Groupings, U.N. STAT. DIVISION, http://unstats.un.org/unsd/methods/m49/m49regin.htm (last revised Sept. 20, 2011).


3. Id.

careers. This notion is at the center of the current changes in Japanese legislation regarding parental leave.

In contrast to the United States, Japan offers far more extensive parental leave options, including paid leave for a substantial period of time. In fact, the United States is the only developed nation that does not guarantee paid parental leave. Both the United States and Japan claim job security as one of the facets of their leave packages, but career women are often apprehensive about taking advantage of the leave offered because they feel their upward mobility in the workplace will be adversely affected.

This Note examines parental leave and family care leave laws, within the broader context of women's employment, in the United States and Japan. Parental leave refers to the employment benefit that provides paid or unpaid time off of work to either parent to care for a child. This generally includes maternity leave (offered to mothers) and paternity leave (offered to fathers). A historical consideration of the evolution of parental leave laws in each country is necessary to provide a framework and a point of reference to assess relative strides made. A social and cultural evaluation will follow the legal framework, which will contextualize the laws in light of modern societal norms.

There are social and cultural factors that prompt both the legislation of parental leave laws and the practical application of those laws (in other words, how many women actually take advantage of the leave offered). There is no uniformity in international law regarding parental leave, but most developed nations do offer some sort of leave. The lack of universal consensus regarding maternity and paternity leave is an underlying inquiry of this Note and the focus will be on Japan and the United States as case studies.

Through the analysis that follows, it will become clear that the parental leave policies available to mothers do not greatly influence whether women take maternity leave or whether they continue to work after childbirth. Instead, I propose it is the cultural acceptability of taking advantage of

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7. Id.


legal options, as well as the traditional notions of family and gender roles within a culture, that most influence the utilization of parental leave. The United States, which has arguably the worst parental leave laws among developed nations, has relatively high rates of career mothers. In Japan, a nation with a progressive parental leave package, considerably fewer women take advantage of available leave, and even fewer return to work after childbirth. Currently, initiatives are in place to change this trend. In order to effect change, these initiatives should be targeted at changing mindsets and cultural standards, as opposed to solely changing legislation.

II. PARENTAL LEAVE LAWS IN THE UNITED STATES AND IN JAPAN: A HISTORICAL ANALYSIS

A. JAPAN'S PARENTAL LEAVE LAWS FROM 1972 TO 2010

In 1972, The Japanese Diet passed the Working Women's Welfare Law, which requested that employers provide child care leave and construct child care facilities with government agencies that would offer vocational training to women. This law, while well-intentioned, was merely a request to employers, and not a mandate. Thus, the Ministry of Labor was left with the task of trying to persuade employers to comply with this request of their own volition. In 1985, the Equal Employment Opportunity Law (EEOL) updated the Labour Standards Law and provided that Japanese employers have two duties: kinshi (prohibited) and doryoku (best efforts). The kinshi duties prohibit employers from discriminating on the basis of retirement age, discharge, or voluntary resignation. The doryoku duties, on the other hand, are much less strict and only require that the employer endeavor not to discriminate in advertising, hiring, job placement, or employment. Under the 1985 EEOL, women could work more than six hours of overtime.
per week and could work past 10:00 p.m. Women could work up to six weeks before they were due to give birth and could return six weeks after giving birth, as long as a doctor certified that the work would not be harmful. The main problem with the EEOL was its lack of penalties for violations of the kinshi or the doryoku duties. The law created no private action—civil or criminal—upon which an employee could make a valid claim. This left employees without any legal redress. While the law said one thing in its official capacity, the reality was quite another. This is a running theme in Japanese culture. There seem to be two mentalities present in Japan: the official and legal state of affairs and the practical reality, which is often tacitly understood.

1. The Evolution of Japan’s Child Care and Family Care Leave Law

In 1992, the Child Care and Family Care Leave Law (CCFCLL), a law concerning the welfare of workers who take care of children or other family members, including child care and family care leave, went into effect. Under this law, employees were able to take child care leave until the child was twelve months old (eighteen months in exceptional cases, such as the unavailability of a child care center, or if the primary care parent became injured, ill, or deceased). This law, for the first time, allowed Japanese fathers to take paternity leave as well. It also provided family care leave for ninety-three days while receiving the guaranteed thirty percent of the monthly salary from Employment Insurance. This 1992 law was not limited to the months immediately following pregnancy. It provided a limitation on overtime work hours (twenty-four hours a month) and an exemption from midnight shifts (10:00 p.m. to 5:00 a.m.) for parents of preschool-aged children. Similar to CCFCLL, while this option was open to both parents, women were generally the only parents to avail themselves of the privilege.

The aforementioned EEOL, enacted in 1985, was reformed in 2006 to reflect changing familial and societal needs. Where the 1985 EEOL was

21. See Geraghty, supra note 19, at 510.
22. Id.
23. Id.
24. Id.
25. Id.
26. Ishii-Kuntz, Sharing of Housework, supra note 5.
27. Id.
28. Id.
29. Id.
30. Id.
31. Id.
32. Id.
33. Megan L. Starich, The 2006 Revisions to Japan’s Equal Opportunity Employment Law: A Narrow Approach to a Pervasive Problem, 16 Pac. Rim L. & Pol’y J. 551, 561–65 (2007). The EEOL was also revised in 1997, but for the purposes of this paper, the oldest
only concerned with women and mothers, the 2006 revisions broadened the
language to include fathers as well.34 The revised law states, “the basic
principle of this Act is that workers should be able to engage in full
working lives, with respect for maternity in the case of women workers but
without discrimination based on the sex for all workers.”35 The revised law
also expands the prohibition of discrimination based on sex regarding
demotion, change in job type, encouraged or mandatory retirement, and
renewal of contract.36 This change has a great bearing on career mothers’
rights, especially when coupled with Article 9 of the 2006 revised law,
which offers protection for women who take maternity or child care
leave.37 Article 9 prohibits employers from dismissing a woman or
disadvantaging her because of marriage, pregnancy, childbirth, or for
requesting leave for pregnancy or childbirth.38 Further, an employer may
not fire a female worker during her pregnancy, within one year of giving
birth, or for requesting child care leave, unless the employer can provide
some other valid, unrelated reason for the firing.39

On June 30, 2010, the most recent revisions to the CCFCLL went into
effect.40 The goal in revising the existing CCFCLL was to “reverse the
falling birthrate and create a society where both men and women can
continue to work while taking care of children and family members.”41
The original version of this Act provided a leave system intended to be
adopted by employers.42 In October 1995, the Japanese Diet revised the
law to say that companies were obligated to make an effort to adopt and put
into effect child care leave laws.43 This was called the Act on the Welfare
of Workers Who Take Care of Children or Other Family Members
Including Child Care Leave.44 On April 1, 1999, the Japanese Diet
changed the law to create an obligation for employers to establish a family
care leave system.45 The 1999 law also imposed limitations on late night
work for mothers.46 In November 2001, and then in April 2002, the
Japanese Diet changed the law again, first to prohibit disadvantageous
treatment of anyone who applied for or took leave, and then to limit

and newest versions are compared to best and most concisely show the evolution of the law
from its inception to present.
34. Geraghty, supra note 18, at 520.
35. Id. (emphasis omitted).
36. Id.
37. Id.
38. Id.
39. Id.
40. JAPAN MINISTRY OF HEALTH, LABOUR & WELFARE, supra note 12, at 23.
41. Id. at 35.
42. Id.
43. Id. at 10.
44. Id.
45. Id.
46. Id.
overtime work and raise the eligible age for measures to shorten working hours and for considering transfers.\textsuperscript{47} On April 1, 2005, the law was changed yet again to expand the workers eligible for child and family care leave, extend the leave period, ease the limitation on the number of leaves taken, and establish the sick or injured childcare leave system.\textsuperscript{48}

2. Japanese Law Calls on Fathers to Be Fathers in 2010

In 2010, the Japanese Diet enacted a new version of the CCFCLL to encourage fathers to take advantage of leave and take a more active role in raising their children, as well as affording working women more maternity options.\textsuperscript{49} This version of the CCFCLL, effective June 30, 2010,\textsuperscript{50} put forth four substantive provisions, which have the potential to be effective if they are applied as intended. For companies with 100 or fewer employees, the provisions concerning the obligation to provide short working hours and exemption from overtime work, as well as those that establish short-term family care leave, will come into force on June 30, 2012.\textsuperscript{51} This Section considers the logistics of each of these four prongs of the 2010 revision to the CCFCLL, taking into account the social impetuses behind some revisions, and compares the revised law to the previous law.

First, the 2010 CCFCLL seeks to change the work style of parenting workers by expanding the sick or injured child care leave system, and by allowing parenting workers of either sex to work shorter hours or be exempted from overtime work.\textsuperscript{52} Before the 2010 revision, workers were allotted up to five days per year of leave to care for sick or injured children, regardless of the number of preschool-aged children the worker had.\textsuperscript{53} The new law allows for up to five days per year for workers with preschool-aged children and up to ten days for workers with two or more preschool-aged children.\textsuperscript{54}

Second, the CCFCLL establishes work styles that allow fathers to participate in child care by establishing a system to encourage them to take advantage of leave.\textsuperscript{55} Although about thirty percent of men say they want to take child care leave, the actual leave rate is only 1.56\%.\textsuperscript{56} The hours spent by Japanese men on child care and housework are less than those for men in any other developed country.\textsuperscript{57} The 2010 revision, in an effort to encourage fathers to take leave, conditionally extended the period during

\textsuperscript{47} JAPAN MINISTRY OF HEALTH, LABOUR & WELFARE, supra note 12, at 10.
\textsuperscript{48} Id.
\textsuperscript{49} Id.
\textsuperscript{50} Ishii-Kuntz, \textit{Sharing of Housework}, supra note 5.
\textsuperscript{51} JAPAN MINISTRY OF HEALTH, LABOUR & WELFARE, supra note 12, at 23.
\textsuperscript{52} Id. at 29.
\textsuperscript{53} Id.
\textsuperscript{54} Id.
\textsuperscript{55} Id. at 23–25.
\textsuperscript{56} Id. at 25.
\textsuperscript{57} Id.
which parents may take child care leave. In cases where both parents take child care leave, the period is extended until the child reaches one year and two months of age. The maximum leave period available to each parent remains one year, but there is more flexibility regarding when each parent may take leave. Further, when a father takes child care leave during the eight weeks following childbirth, he will be able to take child care leave again later on, as long as the child is younger than one year and two months of age. This provision is meant to give fathers incentive to take leave during the eight weeks immediately following birth. The revision also abolished the provision that excluded workers with full-time housewives (or househusbands) from taking leave by management-labor agreement. These changes highlight the shift in ideals toward incentivizing fathers to take leave and help with child rearing, regardless of their spouse’s employment (or lack thereof).

Third, the CCFCLL assists workers in balancing work and family care by establishing a system that allows workers to take leave for family care on a daily basis. At present, about 500,000 workers left or changed their jobs for family care reasons since 2002. Many workers took paid or unpaid leave during a period when they cared for family members. The 2010 revisions to the law establish a short-term family care leave system that allows workers to take time off to care for a sick or injured family member. It allows for five days of leave per year, or ten days per year if there are two or more family members that require such care.

Finally, the CCFCLL purports to ensure effectiveness by establishing a system to settle disputes quickly, as well as establishing a system that publicizes when an employer has violated the law. The current arbitration system covers employer-employee disputes with regard to childbirth, but not with regard to the acquisition of child care leave. Because the CCFCLL did not previously provide any punishment for violators, only patient advice and guidance by officials effectuated the prior law. The 2010 revisions establish a system of dispute settlement support and an arbitration system which handles employer-employee disputes over the

58. JAPAN MINISTRY OF HEALTH, LABOUR & WELFARE, supra note 12, at 36.
59. Id. at 25.
60. Id. at 23.
61. Id. at 28.
62. Id. at 30.
63. Id. at 25.
64. Id. at 26.
65. Id. at 22.
66. Id. at 26.
67. Id.
68. Id. at 29.
69. Id. at 23.
70. Id. at 26.
71. Id.
acquisition of child care leave. The Prefectural Labour Bureau Directors-General assist in dispute settlement, and an arbitration system will be established. Further, a system that imposes nonlegal penal fines is now in place. This system publishes the names of parties that neglect recommendations. It also will impose nonpenal fines on parties that have submitted false reports. This is meant to ensure effectiveness of the new revisions by deterring people from noncompliance for fear of reputational harm.

Japan has made marked strides with its parental leave policies, as evidenced by comparing the forward-looking, progressive policies of the 2010 CCFCLL with the Working Women’s Welfare Law of 1972. The revised law offers new and expanded options as part of a larger Japanese initiative to counteract and hopefully someday reverse the population decline in Japan. Child care leave laws affect the population problem in many ways. In Japan, about seventy percent of women that were working before childbirth did not return to their job after they gave birth to their first child. Japanese society, however, needs something more than just a change in legislation to persuade women and especially to prompt men to take advantage of parental leave. Even after the law changed and allowed for paternal leave, a mere 1.7% of Japanese men actually took paternity leave. It seems that in order to really change the family dynamic, a cultural shift—as opposed to a legal shift—is truly necessary.

B. THE HISTORY OF AMERICAN PARENTAL LEAVE

The United States’ efforts to implement parental leave policies date back to 1942, when the Women’s Bureau of the United States Department of Labor proposed that employed women get six weeks of leave before their due date and eight weeks after childbirth. Unlike its European counterparts, the United States did not expand its parental leave policies when the amount of employed mothers increased in the 1960s and 1970s. Such leave policies were left to state legislatures, which made for disparate laws across the country. In 1987, nine states had enacted unpaid

73. Id.
74. Id.
75. Id.
76. Id.
77. Id.
78. Id.
79. Id. at 3–5.
80. Id. at 5.
82. Kamerman & Gatenio, supra note 4.
83. Id.
84. Id.
maternity leave laws, and by 1989, another fourteen states joined the trend (eleven of the fourteen included paternal leave). In 1985, Congress introduced the first federal parental leave bill.

1. The Family Medical Leave Act

In 1993, Congress passed and signed into law the Family Medical Leave Act ("FMLA"), which was authored by Senator Chris Dodd. The FMLA requires any company with more than fifty workers to allow twelve weeks of unpaid parental leave, and upon the employee's return, the company must provide him or her with the same or an equivalent job and equivalent employment benefits and pay.

It is important to note the federalist nature of the American legal system and to explain the interplay between federal and state parental leave laws. The FMLA offers a minimum threshold requirement of leave that employers must offer to their childbearing or childrearing employees. If any given state wants to provide an employee with a longer period of job-protected leave, or paid leave, or any other stipulation that provides for more aid than the FMLA, it has that right. Section 825.701 of Title 29 of the Code of Federal Regulations provides in part:

(a) Nothing in FMLA supersedes any provision of State or local law that provides greater family or medical leave rights than those provided by FMLA. The Department of Labor will not, however, enforce State family or medical leave laws, and States may not enforce the FMLA. Employees are not required to designate whether the leave they are taking is FMLA leave or leave under State law, and an employer must comply with the appropriate (applicable) provisions of both. An employer covered by one law and not the other has to comply only with the law under which it is covered. Similarly, an employee eligible under only one law must receive benefits in accordance with that law. If leave qualifies for FMLA leave and leave under State law, the leave used counts against the employee's entitlement under both laws.

For the purpose of this Note, analysis will be limited to federal law, because it makes for a more balanced, parallel comparison to the Japanese Legal System. Congress enacted the FMLA in 1993 and revised it on

85. Kamerman & Gatenio, supra note 4.
86. Id.
88. Id.
90. Id. (offering examples of the interplay between the FMLA and state laws).
91. Id.
92. Id.
January 28, 2008. The majority of the 2008 revisions related to family or child care leave for members of the armed forces. Interestingly, workers requesting leave to care for a service member are granted twenty-six weeks of job-protected leave per twelve-month calendar year. This is more than double the amount of time allotted to care for a family member or child than any nonmilitary occupation, which is only twelve weeks per twelve-month year. The FMLA was then revised twice more in 2009: on October 28 and then on December 21. The October 28 revisions changed the leave available to armed service members and their caretakers. The December 21 revisions dealt with airline flight crews and their leave opportunities.

The current FMLA requires employers with fifty or more employees to provide up to twelve weeks unpaid, job-protected leave each year to eligible employees. This leave is in place so that an employee can care for a newborn, a newly adopted or foster child, a spouse, child, or parent with a serious health condition, or a serious health condition of the employee, including maternity-related disability. There are some exceptions to this. For example, employees may be required to use sick days or vacation days to cover a portion or all of their parental leave days. Further, an employer is allowed to deny this leave to an employee in the highest-paid ten percent of its work force, if the employee requesting leave is a “key” employee and letting her or him take leave would create a problem for the firm.

2. Findings and Purposes of the FMLA

The stated “findings and purposes” of the 1993 FMLA—which are still applicable today and have not since been rewritten—are listed under Section 2 of the Act. There are six listed findings and five purposes, which shed light on the reasoning behind the creation of the Act. The findings by Congress include the following six facts: (1) The number of households in which the single parent or both parents work is increasing significantly; (2) It is important for the development of children and the
family unit that fathers and mothers be able to participate in early
care of family members who have serious health
conditions; (3) The lack of employment policies to accommodate working
parents can force individuals to choose between job security and parenting;
(4) There is inadequate job security for employees who have serious health
conditions that prevent them from working for temporary periods; (5) Due
to the nature of gender roles in our society, the primary responsibility for
family caretaking often falls on women, and such responsibility affects the
working lives of women more than it affects the working lives of men; and
(6) Employment standards that apply to one gender only have serious
potential for encouraging employers to discriminate against employees and
applicants for employment who are of that gender.\textsuperscript{106}

Congress' findings here are mostly concerned with the healthy
development of the family unit and the employment standards in place with
respect to both genders, but especially for women. There is no other stated
rationale—such as increasing the workforce or increasing the reproductive
population, as in Japan—for the enactment of the FMLA.

Section 2 of the Act also lists five "purposes" of the FMLA: (1) To
balance the demands of the workplace with the needs of families, to
promote the stability and economic security of families, and to promote
national interests in preserving family integrity; (2) To entitle employees to
take reasonable leave for medical reasons, for the birth or adoption of a
child, and for the care of a child, spouse, or parent who has a serious health
condition; (3) To accomplish the purposes described in the above two
factors in a manner that accommodates the legitimate interests of
employers; (4) To accomplish the purposes described in the first two
factors in a manner that, consistent with the Equal Protection Clause of the
Fourteenth Amendment, minimizes the potential for employment
discrimination on the basis of sex by ensuring that leave is available for
eligible medical reasons (including maternity-related disability) and for
compelling family reasons, on a gender-neutral basis; and (5) To promote
the goal of equal employment opportunity for women and men.\textsuperscript{107}

The purposes of the FMLA are mainly focused on the integrity and
preservation of families and the family ideal, and on job-related anti-
gender-discrimination goals. Again, there is no explicit purpose of the Act
concerning any other social agenda, such as incentivizing families to have
more children, or for more people to enter into the workforce, as is the case
with the Japanese CCFCLL Law. While it is possible that these are
implicit factors, or even corollary effects, they are not at the forefront of the
FMLA's purpose.

\textsuperscript{106} 29 U.S.C. § 2601.
\textsuperscript{107} Id.
C. THE UNITED STATES OFFERS LITTLE ADVANTAGE, JAPAN TAKES LITTLE ADVANTAGE

Much like Japan’s Child Care and Family Care Leave Act, the United States’ FMLA has been revised and amended to reflect and inspire societal changes. Sometimes, the United States government tries to effect domestic change by instituting new laws that set standards not yet reached by society. In this way, American laws can drive social change. Japan, on the other hand, tends to put forth new laws that, instead of inspiring change, reflect changes already in motion in society, or at least changes that are supposedly already in motion. This dichotomy within Japan harks back to an earlier point: Japanese society tends to have two mindsets when it comes to the law, one being the official position and the other being real practices and social norms. The new parental leave laws in Japan might reflect a change already in motion (later, the cultural analysis will reflect that more men, and even some prominent members of society like a male governor, are taking paternal leave). However, it seems that the new leave laws are actually more like the analogous American law in that they are in place to motivate a social change: To shift the family dynamic and put more of the child rearing burden on men.

Japanese law, unlike that in the United States, offers parental leave options that actually support family development and would, theoretically, support women’s return to work. Like the United States, Japan offers job-protected leave, but Japan goes even further in that it mandates companies to compensate their employees during their time away from work. What ends up happening in Japan, however, is that seventy percent of women do not return to work after childbirth. In the United States, where women only receive unpaid leave, a majority still return to work. Given this disparity, it must be the case that cultural factors, and not the law, make a greater impact on parents’ decisions regarding child care leave.

III. A CULTURAL ANALYSIS OF THE EFFECTIVENESS AND IMPETUSES OF RECENT PARENTAL LEAVE LAWS IN JAPAN AND THE UNITED STATES

Parental leave legislation’s aims are inversely related to their practical effects, at least relative to Japan and the United States. The United States
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has a far inferior parental leave policy, and yet a higher percentage of parents take advantage of the available leave and return to work after the child rearing period. Japan, on the other hand, offers substantial paid parental leave, and yet fewer women take advantage, under two percent of men take advantage, and it is rare that a woman returns to work after childbirth. 115 Thus, as there appears to be a negligible causal relationship between legislation and practice, it must be that cultural disparities play a large role in determining how Japanese and American societies utilize parental leave.

A. JAPAN: A FUTURE OF IKUMEN AND MAMA ASTRONAUTS?

A twenty-something Japanese mother-to-be told The Observer about how she was forced to resign from her job in Japan: “‘The personnel department just gave me the [pre-written resignation] letter,’ she recalled. ‘I was told to copy it by hand, sign it and date it. When I didn’t do it immediately, the supervisor yelled at me. I finally gave in.’” 116 This young woman’s story is unfortunate, and not uncommon.

In a similar story, Chie, a saleswoman at a Japanese firm, opted to quit her job after a blatant showing of discrimination. 117 She worked alongside men who slapped women’s backsides. 118 After five years of wearing a uniform and showing up early to make coffee, she told her boss she would like to take over for two departing salesmen. 119 At the next office meeting, her boss announced that he was hiring two men for the job. 120 When Chie informed her boss after that meeting that she was quitting, her boss said to her, “Oh, were you serious?” 121 Chie was also the first and last person to take maternity leave at that company, which she believes factored in to her negative treatment. 122

Japanese companies have had a long history of being unfriendly to women and especially to mothers. 123 In fact, the World Economic Forum downgraded Japan in its Gender Gap Report from 98th out of 130 countries in 2008 to 101st out of 134 countries in 2009. 124 Part of the issue is that women have more often than not been employed in administrative

115. See generally, JAPAN MINISTRY OF HEALTH, LABOUR & WELFARE, supra note 12.
118. Id.
119. Id.
120. Id.
121. Id.
122. Id.
123. Id.
124. Id.
positions, and they have generally been short-term contract jobs. These "office ladies" typically performed clerical work and served tea. Between 1985 and 2008, the proportion of female full-time employees fell from 68.1% to 46.5%. As of 2009, 53.5% of women in the workforce were part-time or contract workers, while only 19.1% of men in the workforce were part-time or contract workers.

In September of 2009, a new government took power in Japan and ended a half a century of almost unbroken conservative rule. Under this new government, the Ministry of Health, Labour and Welfare initiated a campaign to encourage men to take leave from work and help to raise their young children. This campaign, known as the "Ikumen" program, has the goal of raising awareness that child rearing is not just for women and creating an environment where both spouses can work and help with the family. "Ikumen" is a play on words: "iku" is the Japanese word for child raising, and is paired with the English word, "men." Although it is a very slow process, men are catching on to this trend as it becomes more socially acceptable. Some prominent fathers in Japanese society have taken advantage of paternal leave options and are hoping that their efforts will inspire other fathers to do the same.

Hidehiko Yuzaki, governor of the Hiroshima Prefecture, recently took paternity leave when his third child was born. It is hard to say whether this government "Ikumen" initiative is in place to lessen the gender divide and work toward equality, or if it is only an attempt to affect the birthrate. In all likelihood the answer is somewhere in between. The population decline is a serious problem in Japan, but at times such a problem can have real positive social effects.

There are now about 127 million people in Japan and, if current trends continue, the population is projected to decline to about forty-five million by 2105. These new laws are in place in hopes of prompting another baby boom, in addition to lessening gender divides. Other measures are

125. Blair, supra note 117.
126. Id.
127. Id.
129. Kakuchi, supra note 81.
130. Id.
131. Id.
132. Koh, supra note 110.
133. Id.
134. Id.
135. Id.
137. See JAPAN MINISTRY OF HEALTH, LABOUR & WELFARE, supra note 12.
also in place working toward the goal of repopulating. Former Prime Minister Yukio Hatoyama has appointed former human rights lawyer Mizuho Fukushima as his State Minister for the Declining Birthrate and Gender Equality. Mizuho Fukushima's goal is to create more nurseries and offer more financial aid for women taking advantage of maternity leave. Prime Minister Yukio Hatoyama has promised to bring the birthrate back to a sustainable level and ease the expense of raising children. However it is not only the expense of raising children that presents a problem, but also the insufficient availability of child care facilities. In December 2009, more than 25,384 children were on waiting lists to get into daycare facilities. Because child care facilities were and are so scarce, many women have been forced to quit their jobs. This is simply not a problem that exists in the United States, which is likely one of the reasons why a majority of mothers are able to return to work after childbirth.

There are many other factors that contribute to the statistic that seventy percent of women in Japan do not return to work after having their first child. Women report that it is hard to strike a work-life balance given Japan's typically long working hours. There is also the larger issue that the culture of employment in Japan is still largely patriarchal; Japan is a developing country in terms of gender equality, according to Cabinet Office official Mariko Bando. The Cabinet Office released a White Paper on Equal Gender Participation in 2003 that highlighted measures, social institutions, and awareness levels concerning gender equality among seven countries, one of which was Japan. In this report, 67.7% of Japanese women surveyed said that men are given preferential treatment at work. Japan also had the lowest number of female civil servants working in the government sector; a mere 20.2% (as opposed to 49.3% in the U.S.). Regarding parental leave, the data showed that in 2003, while 56.4% of women in Japan take advantage of maternity leave options, only

139. Id.
140. Id.
142. Id.
143. Id.
144. Id.
145. Id.
146. Id.
148. Id.
149. Id.
150. Id.
0.4% of men take paternal leave. Seven years later, the statistic went up to: 1.7% of men taking paternal leave. While the change is slow-moving, it is happening. The 2003 White Papers also stated that during the childrearing period, husbands in Japan spent an average of forty-eight minutes per day doing household work, far shorter than the approximate three hours husbands in the United States spent. It is no wonder that women opt not to return to their jobs after childbirth when it is a cultural norm for their husbands to spend under an hour on household work; it would be quite difficult for a mother to work a full-time job, raise a child, and manage a household with so little help. The paper attributed the slow process of promoting gender equality in Japan to the fact that there is still a strong career divide between men and women. The paper urged working conditions to be more tailored to women’s needs and therefore more flexible, and argued that Japan needs more legislation or company policies to further this end.

While the gender discrimination gap in the employment context is still quite wide in Japan, there is a silver lining: women who have made it to the top and would not touch a teapot in the office are paid comparably to their male colleagues. In the United States, the gender gap in pay is smaller than that in Japan. However, even in the United States, women still earn nearly a fifth less on average than their male counterparts.

In Japan, many women have been inspired since April 2010, when Naoko Yamazaki—affectionately referred to as “mama astronaut”—was part of a space shuttle crew. “I think she’s very impressive and makes me think Japanese women can do anything,” said Yuki Saito, a student at a women’s university in Tokyo who felt inspired by Yamazaki’s accomplishment. “Women of my mother’s generation had fewer chances for a career, let alone a career and a family,” Saito said. “While

151. Japan Developing Nation, supra note 147. There is disunity among statistical reports for this specific inquiry. Another statistic from the Ministry of Health, Labour and Welfare stated that eighty-six percent of Japanese women take advantage of maternity leave whereas under two percent of men take advantage of paternity leave. Regardless, the thrust of the information—the vast disparity between the majority of women taking leave and a tiny percentage of men taking leave—is consistent.
152. Id.
153. Id.
154. Id.
155. Blair, supra note 117.
158. Blair, supra note 117.
159. Id.
160. Id.
the situation for us is still very different [from those of] women in foreign countries, it is getting better."

B. THE UNITED STATES: A FUTURE OF CHILDLESS CAREER WOMEN AND JOBLESS MOTHERS?

The United States' FMLA only offers unpaid parental leave. In fact, out of 173 countries surveyed in 2007, the United States is one of five countries that does not guarantee paid leave. The other four countries are Swaziland, Liberia, Lesotho, and Papua New Guinea. Paid parental leave is a human right that should be in place to preserve the family infrastructure and the economic productivity of a nation, and the fact that the United States' peers on this point are the four above-mentioned countries speaks to how unprogressive the FMLA is. This leaves the United States as the only so-called developed country that does not offer paid leave. Of course, it is true that states are free to impose their own laws, and private companies can provide even greater leave if they so desire. As a point of reference, however, only one-fourth of U.S. employers provide fully paid maternity leave of any duration. Even in Iraq, women get six months of full pay and six months of half pay.

Women in the United States are afraid to take maternity leave because even if the leave provided is job protected, women worry that their chances of ever getting a promotion are slim. Today, on average, women take five to six weeks of unpaid maternity leave—less than half of the time offered under the law—because they are so nervous about being phased out of their jobs. In the United States, more than half of women return to work within three months of childbirth, as compared with less than thirty percent in Japan returning to work during the childrearing period.

The state of the economy can also greatly affect whether and for how long people take parental leave. In 2009, when the American economy
was arguably at the peak—or more appropriately, the dip—of its most recent recession, many women reported cutting down the amount of time they took for maternity leave. In a survey conducted by Working Mother Magazine, about one-third of respondents said that the recession was affecting their decision to take unpaid maternity leave. Other factors that reportedly influence the speed of a woman’s return to work after the birth of a child are: family structure, education, age, birth history, race or ethnicity, and—the strongest factor of all—whether the woman had been working prior to the birth.

It is important to note that, at the state level, the available child care leave varies, and some states offer reasonable packages that more closely resemble those of nations like Japan. For example, California has passed legislation for paid family leave called the State Disability Insurance Program. This program entitles employees to a maximum of six weeks of partial pay each year to care for a newborn or handle other family matters. Some U.S. companies offer similar options, or have written in clauses to their disability leave options that include recent childbirth.

In 2007, Chris Dodd, Democrat Senator of Connecticut, proposed new national legislation that would provide at least six weeks of paid leave for workers. Senator Dodd, who authored the Family and Medical Leave Act, offered some reasons as to why a new law was necessary—reasons that sound strikingly similar to those used in Japan to institute new child care laws: “Besides our nation’s families, our nation’s economy, its production, and its competitiveness are threatened when families are forced to choose between the job they need and the family they love.” “FMLA was a milestone in our nation’s dialogue, acknowledging that families, workforce production and competitiveness are not mutually exclusive.” This idea that parental leave laws have a direct effect on the national economy and competitiveness was a major factor in Japan’s change in legislation as well. The declining birthrate in Japan is having a negative effect on the Japanese economy. By changing the child care leave laws and incentivizing families to have more children, the hope is that the repopulation will turn the economy back around in a sustainable way.
Senator Dodd had a similar idea to jumpstart the American economy, but his proposal was never adopted. 184

IV. CONCLUSION: THE BIG PICTURE

More so than in any other area, law that involves family issues tends to lack international consensus. This is probably because family values are so intrinsically related to national culture. Much like religion, the way that a family functions within any given culture tends to be a tacitly untouchable realm of law by the international community. Perhaps the reason there is no uniformity among nations regarding standards of parental leave is that women are so closely related to the furtherance of traditions and culture. At the most basic level, culture is passed on to future generations within families by having offspring and exposing those offspring to the traditional norms of the family and the culture at large. Today, with the advent of the internet and in the face of blurred cultural lines and globalization, ethnic groups are clinging fast to their identities. 185 The melting pot/salad bowl debate is arguably more apt today than ever before. To preserve a nation’s cultural identity, there is an undercurrent that drags women away from the corporate, global epicenter to which men flock, and pulls them, slowly but surely, back to their traditional roles.

This is evident to different degrees in different countries, and is probably proportional to a country’s willingness to succumb to—or embrace—globalization. In a country like America, a heterogeneous country of immigrants, perhaps it is easier to let go of the notion of cultural preservation and traditions. Within America, there is wide variation among ethnic groups as to how many women are employed, how many take maternity leave, and the like. 186 America is a country made up of different states, each state with its own notion of the level of regulation it should impose on the businesses within its borders. America is also made up of a huge variety of immigrants and cultures, each with a unique identity. With so much diversity, there is less national tradition and perhaps less consensus as to the “right” amount of family leave, and whether or not it should be paid.

In a largely homogenous country like Japan on the other hand, where national pride is a huge cultural underpinning, the notion of tradition is more sacred. It is for this reason that women, while often treated as subordinate to men, are actually quite revered. Subconsciously, Japanese men know that women are their only chance at preserving their culture and

184. Schweitzer, supra note 87.
passing their traditions on to future generations. Only by procreating and inculcating their children with the values and norms of their society will Japan, a small country of islands, be able to preserve its culture in the face of globalization.